

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
May 19, 2008**

**Members Present:**

Michael Villyard  
Michael Gallagher  
Liz Victor  
Helen Dutmer  
George L. Alejos  
Paul Klein  
Mary Rogers  
Andrew Ozuna  
Gene Camargo  
Mimi Moffat

**Staff:**

Roderick Sanchez, Director  
Fernando De Leon, P.E. Assistant Director  
Chris Looney, Planning Manager  
Rudy Niño, Senior Planner  
Jacob Floyd, Planner  
Paul Wendland, Asst. City Attorney

**Call to Order**

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Villyard, Chairman, called the meeting to order and called roll of the applicants for each case.

Ms. Moffat arrived at 1:02 p.m.

Case A-08-060 was withdrawn by the applicant.

**CASE NO. A-08-024**

Applicant – Drury Southwest, Inc.  
The south 73.23 feet of Lot 37, Block 9, NCB 8672  
8818 Jones Maltsberger  
Zoned: "C-3" Commercial District

The applicant is appealing the decision of the Director of the Development Services Department to follow the Board of Adjustment's recommendation in Case A-08-024 to uphold the Chief Sign Inspector's decision to issue a stop work order for the reconstruction of an on-premise free-standing pole sign, and the interpretation of Chapter 28 Section 245 by the Chief Sign Inspector that the reconstruction of an on-premise freestanding sign cabinet from a nonconforming sign, without first obtaining the proper approvals, resulted in the termination of nonconforming rights to the sign.

Jacob Floyd, Planner, presented background and staff's recommendation of denial on this case. He indicated 35 notices were mailed, 1 returned in favor and 1 was returned in opposition.

Charles Eden, representative, stated he is requesting this appeal because it is not a reconstruction of the sign. He also stated it is reconfiguration to remove the trademark logo that was on the existing sign due the relocation of the Hampton Inn. He further stated it could cause a trademark infringement and a case for litigation.

**The following citizen(s) appeared to speak:**

Lawrence Douglas, citizen, spoke in favor.

Kevin Whitfield, citizen, spoke in favor.

David Garcia, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-024 closed.

**MOTION**

A motion was made by **Mr. Ozuna**. Regarding Appeal No. **A-08-024**, variance application for **Drury Southwest, Inc.**, subject property description **the south 73.23 feet of Lot 37, Block 9, NCB 8672**, located at **8818 Jones Maltsberger Road**, the applicant is **Drury Southwest with the owner being Auburn Investments Inc.** I move for a motion in favor to overturn or overrule the Director of Development Services Department's decision as stated in the case. The motion seconded by **Mr. Hardemon**.

**AYES: Ozuna, Hardemon, Camargo, Rogers, Dutmer**

**NAY: Moffat, Klein, Gallagher, Victor, Villyard**

**THE MOTION FAILS.**

**CASE NO. A-08-058**

Applicant – Rebecca A. Finnerty/Gary L. Baker  
The south 216 feet of Lot 441, NCB 7850  
357 Mayfield  
Zoned: "R-4" Residential Single-Family District

The applicant is requesting for a variance from the Unified Development Code Standard that a front-yard fence shall not exceed 4 feet in height in order to erect a 6-foot tall fence within the front yard.

Michael Farber, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 16 notices mailed, 3 were returned in favor and 0 were returned in opposition.

Rebecca Finnerty, owner, stated the reason for this request for the safety of her two dogs. She also stated she was concerned about the kids jumping her fence to get to the library. She further stated she is requesting this variance to secure their vehicles due to one of the vehicles being vandalized and broken into. She also stated she wants a 5-foot fence with an arch that reaches 6-feet.

**The following citizen(s) appeared to speak:**

Gary L. Baker, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-058 closed.

**MOTION**

A motion was made by **Ms. Rogers**. Regarding Appeal No. **A-08-058**, variance application for a **from the UDC Standard that a front-yard fence shall not exceed 4 feet in height in order to erect a 6-foot tall fence within the front yard**, subject property description **the south 216 feet of Lot 441, NCB 7850, located at 357 West Mayfield**, applicant being **Rebecca A. Finnerty/Gary L. Baker**. I move that the Board of Adjustment grant the applicant's request, application for the 2-foot variance from the UDC standard for a 6-foot tall fence in the front yard. Specifically we find that such variance will not be contrary to the public interest in that **it will not affect adversely the overall area**. Due to the special conditions a literal enforcement of the ordinance would result in unnecessary hardship in that **there is a crime potential in this area, the applicant having had one incident already within the past couple of months**. So that the spirit of the ordinance is observed and substantial justice is done in that **the protection for the applicant and their property would be provided additionally dogs which they maintain would be secure**. Such variance will not authorize the operation of a uses other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **security fences or higher fences are common in that area**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **it will not have a negative impact on the surrounding properties**. Such variance will not alter the essential character of the districts in which the variance is sought in that **the higher fence is in keeping with other fences in the area and does provide protection**. Such variance will be in harmony with the spirit and purpose of this chapter in that **it will maintain existing streetscape with significant changes**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the potential for crime in the area does exist and the added fence height would be provide the security of the property and the assets**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the proposed variance will not weaken the overall zoning plan of this area**. The variance will not adversely affect the public health, safety or welfare of the public in that **the fence will not in any way create or cause an adverse affect to the general public**. The motion seconded by **Mr. Camargo**.

**AYES: Rogers, Camargo, Hardemon, Klein, Victor, Ozuna, Gallagher, Dutmer**

**NAY: Moffat, Villyard**

**THE VARIANCE WAS NOT GRANTED.**

**CASE NO. A-08-061**

Applicant – Sandra Soria  
Lot 29, Block 9, NCB 16519  
6543 Marcum Drive  
Zoned: "R-6" Residential Single-Family

The applicant is requesting for a Special Exception to relocate a residential structure from 2432 South Loop 410 West to 6543 Marcum Drive.

Jacob Floyd, Planner, presented background and staff's recommendation of approval on this case. He indicated 23 notices were mailed, 0 returned in favor and 0 were returned in opposition.

Edgar Dodson, representative, stated he is going to comply with city regulations as to moving the house and repairing it. He further stated he is going to have tweak the house a little to avoid knocking down some trees.

**No citizens to speak**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-061 closed.

**MOTION**

A motion was made by **Mr. Gallagher**. Re Appeal Case No. **A-08-061**, application for a **Special Exception to relocate a residential structure from 2432 South Loop 410 West to 6543 Marcum Drive**, the legal description being **Lot 29, Block 9, NCB 16519**, the address being **6543 Marcum Drive**, zoned **"R-6" Residential Single-Family District**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-061** application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UD 35-399.03. Specifically we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **we have determined by the evidence presented to us today that this building is consistent in size, quality, construction, and age of the surrounding properties**. The public welfare and convenience will be substantially served in that **this will represent an improvement to the neighborhood**. The neighboring property will not be substantially injured by such proposed use in that **this will actually provide a valuable infill for the area**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **there are other properties in the surrounding area with very similar construction**. The special exception

will not weaken the general purpose of the district or the regulations herein established for the specific district in that **this exception is designated for this specific property and none other. This house as we have determined through the evidence is comparable in size and quality in construction and condition of the average houses in the area.** The motion seconded by Mr. Klein.

**AYES: Gallagher, Klein, Moffat, Victor, Camargo, Rogers, Hardemon, Ozuna, Dutmer, Villyard**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

#### **Approval of the Minutes**

**Mr. Camargo** a motion to approve April 21, 2008 minutes and was seconded by **Mr. Gallagher** and all members voted in the affirmative.

#### **Staff Report**

**Rudy Niño**, Senior Planner, stated that they will have election of officers for the Board members at the regularly scheduled meeting which is June 2, 2008.

There being no further discussion, meeting adjourned at 3:43 p.m.

APPROVED BY: \_\_\_\_\_

D. Mike Villyard, Chairman

OR

Michael R. Gallagher  
Michael Gallagher, Vice-Chair

DATE: \_\_\_\_\_

June 16, 2008

ATTESTED BY: \_\_\_\_\_

Christopher J. Looney  
Christopher J. Looney  
Development Services, Planning Manager

DATE: \_\_\_\_\_

6-16-08